IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09/03/2004

CORAM

THE HON'BLE MR. JUSTICE P.D.DINAKARAN

W.P.No.21944 of 2000 and W.P.No.10028 of 2002

P. Adhikesavelu,
Part Time Clerk,
Veeranganellur Panchayat Office,
Thadoor Post,
Thiruttani Panchayat Union,
Thiruttani District. .....Petitioner in
Both W.Ps

- Vs -

1. The District Collector,
Thiruvallur District,
Thiruvallur.

2. The Block Development Officer,
Thiruttani Block,
Thiruttani Taluk,
Thiruvallur District. .....Respondents 1 & 2
in both W.Ps

Tmt. Rajiyabi,
President,
Veeranganaloor Panchayat,
Nebeeri Kandigai Post,
Thiruttani Taluk,
Thiruvallur District. .....3rd respondent in
W.P.No.21944 of 2000

The President,
Veeranganallur Panchayat,
Islam Nagar, Netteri,
Kandigai Post,
Thiruvallur District.

N.Moula Shahib,
S/o. Noor Shahib,
Islam Nagar, Netteri,
Kandigai Post,
Thiruttani Taluk,

Thiruvallur District. .....Respondents 3 & 4
in W.P.No.10028 of 2002

Writ Petitions, under Article 226 of the Constitution of
India, praying for issuance of a Writ of Certiorarified Mandamus, to call for
the records and to quash the same, as stated therein.

For Petitioner :: Mr. V. Dhanapalan

For Respondents:: Mr. V. Subbarayan
Special Government Pleader

Mr. R. Venkata Krishnan

:O R D E R

Both the writ petitions are filed by the same petitioner.

2. While W.P.No.21944 of 2000 has been filed against the
resolution dated 09.10.1997 passed by the President, Veeraganallur Panchayat,
Thadur Post, Thiruttani Taluk, terminating the services of the petitioner from
the post of a part-time clerk of Veeraganallur Panchayat, W.P.No.10028 of 2002
has been filed against the proceedings dated 23.0 1.2002 of the third
respondent / the President, Veeraganallur Panchayat, Thadur Post, Thiruttani
Taluk, appointing the fourth respondent as a part-time clerk in Veeraganallur
Panchayat.

3. Concededly, the President, Veeraganallur Panchayat by an
order dated 17.02.1997 appointed the petitioner as a part-time clerk in
Veeraganallur Panchayat for a monthly salary of Rs.400/-. The petitioner
alleges that the President, Veeraganallur Panchayat demanded a sum of
Rs.10,000/- as bribe for the said appointment but he could not oblige for the
same and therefore the third respondent / President of Veeraganallur Panchayat
convened a panchayat on 09.10.1997 and passed a resolution, terminating the
services of the petitioner. The petitioner made representations to the
Collector on 24.12.1999 and 18.10.2000, requesting him to cancel the
resolution and reinstate him in service. Since the representations did not
yield any result, he has filed W.P.No.21944 of 2000.

4. While admitting W.P.No.21944 of 2000 on 27.12.2000, this
Court passed the following interim order in W.M.P.No. 31851 of 2000:-
"Any appointment will be subject to the result of the writ petition.
Notice".

5. Taking advantage of the order passed in W.M.P.No. 31851
of 2000 , the third respondent / the President, Veeraganallur Panchayat by
proceedings dated 23.01.2002 appointed one Moula Shahib as a part-time clerk
and against the said proceedings dated 23.01.2002, the petitioner has filed
W.P.No.10028 of 2002.

6.1. According to the learned counsel for the petitioner,

even though the third respondent / the President of Veeraganallur Panchayat, by exercising his powers as Executive Authority conferred under Section 84 of the Tamil Nadu Panchayat Act (in brevity Act) convened the panchayat and terminated the services of the petitioner, since the fact that the petitioner was appointed as a part-time clerk in Veeraganallur Panchayat is not disputed, he had gained vested rights and therefore, the same should not have been deprived of without providing an opportunity to the petitioner. Hence, learned counsel for the petitioner contends that the impugned resolution dated 09.10.l997 is violative of principles of natural justice.

6.2. In this regard, learned counsel for the petitioner, by inviting my attention to the proceedings of the Rural Development Department dated 20.11.2001, wherein it is provided that even by exercising the powers under Section 84 of the Act, the Presidents of the Village Panchayat viz., the third respondent herein shall not terminate the services of any servants of panchayat, without giving any reasonable opportunity to defend their case, submits that the impugned resolution is liable to be quashed.

6.3. Learned counsel for the petitioner further contends that the fourth respondent was appointed only in the vacancy caused due to the termination of the petitioner, and the appointment is subject to the result of the writ petition in W.P.No. 21944 of 2000 and therefore, the said appointment also is liable to be quashed.

7. Per contra, Mr. V.Subbarayan, learned Special Government Pleader, appearing for the respondents submits that the appointment of the petitioner by the third respondent / President itself is not made by the Village Panchayat and therefore, the petitioner has no locus standi to claim any right on the basis of the appointment made by the third respondent.

8. I have given my careful consideration to the submissions of learned counsel for the petitioner and the respondents.

9. It is not in dispute that the third respondent / President, Veeraganallur Panchayat by exercising his powers as Executive Authority, as notified by the Government under Section 84 of the Act, terminated the services of the petitioner and appointed the fourth respondent as a part-time clerk in the said panchayat. Only after recognising the petitioner as a servant of the village panchayat, the third respondent proposed to convene the panchayat to pass the resolution dated 09 .10.1997, terminating the services of the petitioner. Even in the resolution dated 09.10.1997, which is impugned in W.P.No.21944 of 2000, there is no averment to the effect that the very appointment of the petitioner by the third respondent was illegal. The panchayat resolved to terminate the services of the petitioner due to the lack of confidence in him, but not on any other grounds. The allegations made against the petitioner in the resolution dated 09.10.1997 obviously creates a stigma.

10. It is also not in dispute that the Rural Development Department, by proceedings dated 20.11.2001 clarified that even while

exercising the powers conferred under Section 84 of the Act, the Presidents of the village panchayats shall not terminate the services of any servants of panchayat, without giving any reasonable opportunity to defend their case.

11. In the instant case, it is apparent on the face of records that the petitioner was not given any such opportunity to defend his case, before passing the impugned resolution, which is contrary to the procedure and also violates the principles of natural justice. In my considered opinion, the impugned resolution is liable to be quashed and the same is hereby quashed. Consequently, the proceedings of the third respondent / President, Veeraganallur Panchayat, appointing the fourth respondent as a part-time clerk is also quashed.

12. At this point of time, Mr. V.Dhanapalan, learned counsel for the petitioner expressed that if the petitioner is given continuance of services from the date of dismissal, he is not very particular as to the backwages. The said request of the petitioner appears to be reasonable and therefore, the respondents are directed to give the benefit of continuity of service to the petitioner.

13. Both the writ petitions are ordered accordingly. No costs.

Dpn/-

To:

1. The District Collector,
Thiruvallur District,
Thiruvallur.

2. The Block Development Officer,
Thiruttani Block,
Thiruttani Taluk,
Thiruvallur District.

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